Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976.

No. 76-93

ROVIN SALES COMPANY,

Petitioner,

vs.

CORNELIU BOGDAN AND NAPOLEON FODOR,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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OPINIONS BELOW.

The only opinion in this matter is the Memorandum Opinion of the District Court which is reported in *403 F. Supp. 1298* and although not directed to the matters covered by the Order which the Petition for Writ of Certiorari seeks to have reviewed gives what Respondents feel is an interesting background and is therefore included in the Appendix A hereto.

JURISDICTION.

The jurisdictional requisites are set forth in the Petition.

QUESTIONS PRESENTED.

1. Whether persons certified by the United States Department of State as enjoying "full diplomatic immunity from judicial process under the provisions of Sections 252-254 of Title 22 of the United States Code" are entitled to the immunity granted by those Sections; or whether the Court of Appeals should ignore the clear provisions of the statute at the request of the Petitioner.

2. Whether the Order entered by the District Court on January 30, 1976 denying Petitioner's Motion to reconsider the dismissal from the action of the two Respondents because of their diplomatic immunity and refusing to certify the question for appeal was an appealable order.

STATUTES INVOLVED.

The statutes involved are cited and reproduced in the Petition.

STATEMENT OF THE CASE.

The Petitioner is a corporation organized with minimum capital,[1] which has never had any directors,[2] or even a corporate seal,[3] and has been run as a "sole proprietorship" by its attorney,[4] who admitted in deposition that he had devoted his full time to the practice of law.[5] Except at relatively brief intervals when the corporation may have had as many as three other

1. Deposition of John R. Vintilla taken June 29, 1976, as filed with the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, at page 40.
2. *Ibid.*, p. 39.
3. *Ibid.*, p. 7.
4. *Ibid.*, p. 39.
5. *Ibid.*, p. 63.

employees at one time,[6] the Petitioner has had no other employees.[7]

The Amended Complaint alleges tortious acts by the Respondents and breach of contract and tortious acts on the part of the Socialist Republic of Romania and certain of its agencies and individual representatives.

The claim of diplomatic immunity on behalf of the Respondents herein was upheld by the Court and the Respondents dismissed from the action on the basis of the certification of the United States Department of State that the two Respondents are, and have been for many years, respectively the duly appointed Ambassador Extraordinary and Minister Plenipotentiary and Economic Counselor to the Diplomatic Mission from the Socialist Republic of Romania to the United States, and in said capacity each enjoys "full diplomatic immunity from judicial process under the provisions of Sections 252-254 of Title 22 of the United States Code".

ARGUMENT.

I. Whether or Not Respondents Engaged in Commercial Pursuits as Alleged and Argued by the Petitioner Is Completely Immaterial.

The Respondents are charged with tortious conduct and whether that tort occurred in the course of conducting a commercial pursuit or in the course of a personal transaction or in any other context is completely immaterial.

The law is clear that an Ambassador or public minister of any foreign state authorized and received as such by the President of the United States is immune from service of process without regard to the basis of the suit. This immunity is personal to the Ambassador or Minister and when the claim

6. *Ibid.*, pp. 39, 66, 68, 70.
7. *Ibid.*, p. 113.

is timely and properly made, the sole question is whether or not the person claiming the immunity has, in fact, been authorized and received as such by the President of the United States.

In this case, the Certificates of the United States Department of State to that effect (Appendix B) are conclusive of the fact, which indeed is not disputed by the Petitioner.

Petitioner's oblique contentions (pages 14 and 15 of its Petition) that the State Department by the letter accompanying its certificate, as to the diplomatic immunity status of these Respondents was suggesting to the trial court that immunity from suit should be denied is a libel on the State Department and should be vigorously rejected. Diplomatic immunity when granted is binding upon the court without reference to the merits of the controversy. *Arcaya* v. *Paez,* 145 F. Supp. 464 (1956) *aff'd* 244 F. 2d 958 (2nd Cir. 1957); *Mongillo* v. *Vogel,* 84 F. Supp. 1007 (E. D. Pa. 1949); *Carrera* v. *Carrera,* 174 F. 2d 496 (D. C. Cir. 1949); *Vienna Convention on Diplomatic Relations, signed at Vienna, April 18, 1961.*

As the United States District Court for the Southern District of New York stated in *Arcaya* v. *Paez,* 145 F. Supp. 464 (1956), *aff'd* 244 F. 2d 958 (2nd Cir. 1957):

> "An ambassador or minister is, however, absolutely immune from suit even though it be based upon personal transactions. Magdalena Steam Navigation Company v. Martin, 2 El. § El. 94.
>
> [3] The court must, of course, determine its own jurisdiction without reference to the views of the Department of State. The questions of the diplomatic status enjoyed by a given defendant and the immunity to be accorded him are, however, questions where a determination of the Department of State is binding upon the court. United States of Mexico v. Schmuck, 293 N. Y. 264, 56 N. E. 2d 577."

In *Mongillo* v. *Vogel,* 84 F. Supp. 1007 (E. D. Pa. 1949), the Court, citing *22 U. S. C. A., §§ 252-254* in support of its

action, quashed service of summons on a defendant who at the time of an automobile accident was entitled to diplomatic immunity.

In *Carrera* v. *Carrera,* 174 F. 2d 496 (D. C. Cir. 1949), the United States Court of Appeals for the District of Columbia said at page 497:

> "It is enough that an ambassador has requested immunity, that the State Department has recognized that the person for whom it was requested is entitled to it, and that the Department's recognition has been communicated to the court. *'The courts are disposed to accept as conclusive of the fact of the diplomatic status of an individual claiming an exemption, the views thereon of the political department of their government.'* "[9]

It is clear that the Petitioner has confused sovereign immunity with diplomatic immunity. In the case below, the District Court, rightly or wrongly, has held that since the Defendant, the Socialist Republic of Romania, was allegedly engaged in trade or commerce and therefore refused to dismiss it on the grounds of sovereign immunity. Obviously, this is totally unrelated to the claim for and proper allowance of the diplomatic immunity which Respondents enjoy.

Even though in some extreme cases which can be imagined, such as violation of criminal laws, the doctrine of diplomatic immunity may seem repugnant. However, the reasons for it are necessarily compelling. It protects each country's diplomatic representatives from harassment and is an ancient doctrine, well founded in the laws of all civilized communities and in the Vienna Convention and is specifically made part of the statutory law of the United States of America. Any attempt to change it must be addressed to the Congress of the United States and not to a court.

The attempt of the Petitioner to read into the letter of transmittal of the Certificates what is not shown by the Certificates of the United States Department of State (Appendix B), is

misleading and should be rejected. All of the authorities cited by the Petitioner are cases dealing with claimed sovereign immunity, and have nothing to do with diplomatic immunity.

II. The District Court's Order Dismissing the Respondents as Defendants in the Action Was Not an Appealable Order and Accordingly the Refusal of the Court of Appeals to Review the Same Was Correct.

By relying upon the rule enunciated in *Cohen* v. *Beneficial*, 337 U. S. 531 (1949), and *Gillispie* v. *U. S. Steel Corp.*, 379 U. S. 148 (1964), Petitioner admits the District Court's Order was not a final order.

The orders appealed from do not fall within the conditions required for the application of the *Cohen Rule*. The orders appealed from do not make any final determination of a claim of right separately from and collateral to rights asserted in this action as required by the *Cohen Rule*. The orders granting full diplomatic immunity and dismissing the actions as to two of the Defendants will continue the action without prejudice against the sovereign state of Romania and the remaining Defendants. The granting of diplomatic immunity will not affect the merits of the controversy against the remaining defendants. Nor will it bar an action against the defendants after their diplomatic immunity shall have expired.

The questioned orders are not of sufficient importance to require review. They represent no serious or unsettled questions as required for review under the *Cohen Rule*. The trial court found in the orders of dismissal as to the Defendants Bogdan and Fodor that "all defendants have now filed their answers raising a number of affirmative questions which on their face appear meritorious".

The *Cohen Rule* is explored and dissected in *9 Moores Federal Practice*, § 110.10. The author, at page 133, states:

> "On the face of it, the Cohen rule appears to require three characteristics of an order before it can qualify as a 'final decision': (1) the order must be a final determination of a claim of right 'separable from, and collateral to', rights asserted in the action; (2) it must be 'too important to be denied review', in the sense that it 'presents a serious and unsettled question'; and (3) its review cannot, in the nature of the question that it presents, await final judgment because 'when that time comes, it will be too late effectively to review the . . . order and rights conferred . . . will have been lost, probably irreparably.' "

It is clear that the appeal before this Court does not qualify as a "final decision" as it does not contain any of the above qualifications. The *Cohen Rule* is also reviewed in the case of *Weingartner* v. *Union Oil Company of California*, 431 F. 2d 26 (1970). In that case, the court said at page 29:

> "[3] The Cohen approach rests upon either of two underpinnings: the 'collateral order' rule, e.g. Frank, Requiem for the Final Judgment Rule, 45 Tax.L.Rev. 292, 300-302 (1966); or the likelihood of 'irreparable harm' to a party if immediate review is not allowed, e.g. Note, Appealability in the Federal Courts, 75 Harv.L.Rev. 351, 364 (1961); see also Forgay v. Conrad, 47 U.S. 201, 6 How. 201, 12 L.Ed. 404 (1848). Under neither premise does Cohen render the order before us appealable. The district court's dismissal of the class claim did not deal with rights collateral to the merits of the lawsuit. Rather it struck one of the two counts from the complaint entirely and had the effect of blocking that claim from this lawsuit. Nor will denial of review of that order at this stage create an irreparable hardship for plaintiffs, as we develop more fully in the discussion which follows."

See also *City of New York* v. *International Pipe & Ceramics Corp.*, 410 F. 2d 295 (1969).

CONCLUSION.

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Dated: ....., 1976.

APPENDIX A.

403 FEDERAL SUPPLEMENT.

UNITED STATES DISTRICT COURT,
N. D. Illinois, E. D.
September 15, 1975.

ROVIN SALES COMPANY, Cleveland, Ohio,
Plaintiff,

vs.

THE SOCIALIST REPUBLIC OF ROMANIA, a Foreign State, et al.,
Defendants.

No. 73 C 1550.

Wine distributor brought action against foreign country, its agents and agencies seeking damages arising out of alleged breach of wine distributorship agreement and failure to deliver wines. On motion to quash service of summons and dismiss the action, the District Court, Marshall, J., held that foreign country which engaged in commercial activities was not immune from suit on its contracts; that defendants were amenable to suit under Illinois long-arm statute as to claim for damages arising out of tortious conduct committed in Illinois but were not amenable to suit in district as to claim arising out of the failure to deliver wines to Ohio and Arizona.

Motions granted in part and denied in part.

1. International Law 10.43.

Pleading requirements of Illinois Civil Practice Act that pleader allege substantial averments of fact necessary to state cause of action either at law or in equity were not applicable

as to action brought in Illinois district against foreign country, its agents and agencies under Illinois long-arm statute merely because federal rule embraced methods and circumstances under which extraterritorial service of process could be effected in Illinois. Fed. Rules Civ. Proc. rules 4(e), 8(a), 28 U. S. C. A.; S. H. A. Ill. ch. 110, §§ 16, 17, 31.

2. Federal Civil Procedure 621.

Federal court must apply federal standards of pleading. Fed. Rules Civ. Proc. rule 8(a), 28 U. S. C. A.

3. Federal Civil Procedure 1832.

Inquiry on motion to dismiss action brought in Illinois district against foreign country, its agents and agencies under Illinois long-arm statute was not whether plaintiff pleaded cause of action which arose in part from conduct performed by defendants in Illinois but whether, under amended complaint, plaintiff would be permitted to prove a set of facts in support of its claim which would entitle it to relief and whether that set of facts could be said to involve, in material part, performance of facts by defendants in Illinois. Fed. Rules Civ. Proc. rules 4(e), 8(a), 28 U. S. C. A.; S. H. A. Ill. ch. 110, §§ 16, 17, 31.

4. International Law 10.33.

Foreign sovereign engaged in commercial as opposed to political or governmental activities was not immune from suit on its contracts.

5. Courts 12(2).

Illinois long-arm statute was intended to extend jurisdiction to maximum reach permissible under due process of law. S. H. A. Ill. ch. 110, §§ 16, 17.

6. Constitutional Law 305(4).

Due process requires that a defendant have minimal contacts with the forum in which jurisdiction is asserted.

7. Courts 12(2).

For purposes of Illinois long-arm statute, a defendant is deemed to commit a tortious act in Illinois, if his conduct, although performed out of state, causes injury in Illinois provided he could have reasonably anticipated that his conduct could result in injury in Illinois. S. H. A. Ill. ch. 110, §§ 16, 17.

8. Courts 268(4).

As to count alleging grant to plaintiff of exclusive distributorship of Romanian wines, substantial performance by plaintiff in Chicago in furtherance of distributorship, willful termination of distributorship by defendants and, alternatively, a conspiracy among certain defendants to deprive plaintiff of distributorship, a meeting in Chicago in furtherance of conspiracy and exclusion of plaintiff from Chicago market, defendants had submitted to jurisdiction of Illinois courts and were amenable to suit in Illinois district under Illinois longarm statute by reason of transaction of business and commission of tortious acts in Illinois. Fed. Rules Civ. Proc. rule 4(e), 28 U. S. C. A.; S. H. A. Ill. ch. 110, §§ 16, 17.

9. Courts 268(4).

Fact that plaintiff was not a resident of forum state of Illinois was immaterial in determining whether defendants were amenable to suit in Illinois district pursuant to Illinois long-arm statute. Fed. Rules Civ. Proc. rule 4(e), 28 U. S. C. A.; S. H. A. Ill. ch. 110, §§ 16, 17.

10. Courts 268(4).

As to claim for damages arising out of failure of defendants, to perform contract to deliver wine to distributor in Ohio or to distributor's customer in Arizona, defendants were not amenable to suit in Illinois district under Illinois long-arm statute, Fed. Rules Civ. Proc. rule 4(e), 28 U. S. C. A.; S. H. A. Ill. ch. 110, §§ 16, 17.

11. Courts 268(4).

Claim for damages arising out of breach of agreement to deliver Romanian wines to Ohio or to Arizona could not be joined with claim for damages arising out of tortious conduct in Illinois regarding wine distributorship so as to fall within jurisdiction of federal court sitting in Illinois under Illinois long-arm statute. S. H. A. Ill. ch. 110, § 17(3).

Kaplan & Kaplan, Chicago, Ill., John R. Vintilla, Cleveland, Ohio, for plaintiff.

Nicolae Tanase, Brown, Fox & Blumberg, Jacob L. Fox, Eugene L. Resnick, Chicago, Ill., Charles R. Hancock and Otto L. Yelton, Jr., Dickinson, Tex., for defendants.

MEMORANDUM OPINION.

MARSHALL, *District Judge.*

By an amended complaint that is anything but the short and plain statement contemplated by Fed. R. Civ. P. 8(a), plaintiff, Rovin Sales Company, an Ohio corporation, sues defendants, The Socialist Republic of Romania, a foreign state; its Ministry of Foreign Trade; Vinexport, an enterprise owned by Romania and created for the purpose of selling and exporting Romanian wines; Vasile Lapadatu, the Director General of Vinexport; Corneliu Bogdan, Romania's Ambassador to the United States; Napoleon Fodor, Romania's Chief Commercial Counselor in the United States; Octavian Ichim, the representative of Romania's Ministry of Agriculture in the United States, and Teodor Munteanu, the Economic Counsel of the Romanian Trade Promotion Office in Chicago, Illinois, for damages arising out of defendants' alleged failure to honor and their conspiracy to destroy plaintiff's alleged exclusive distributorship of Romanian wines in the United States. While the complaint has been drawn by counsel, it is akin to the *pro se* pleading considered in *Dioguardi* v. *Durning*, 139 F. 2d 774 (2d Cir. 1944) and presumably is entitled to the same generous construction. *Haines* v. *Kerner*, 404 U. S. 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972); *Conley* v. *Gibson*, 355 U. S. 41, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957). "Nevertheless, we look askance at its hyperbole and obviously *interrorem* prayer for $75,000,000 in damages and we remind counsel of their responsibilities under Rule 11, Fed. R. Civ. P., and the cost consequences contemplated by 28 U. S. C. § 1331(a) (1970)."

All that is presently pending is the motion of all defendants, except Munteanu, to quash service of summons and dismiss the action "on the grounds that this court lacks jurisdiction over the persons of these defendants and the subject matter of the amended complaint." Defendants' Motion to Quash Service

or Dismiss. We assume that Munteanu was advisedly omitted from the motion because he is present in the Northern District of Illinois. But advised or inadvertent, his failure to move to dismiss is of no consequence because of the conclusions we reach as to the threshold jurisdictional questions as to all defendants.

As noted, this is an amended complaint. The original complaint was against Vinexport alone and service was purportedly made on Munteanu as the agent of Vinexport present in this district. A challenge to that service was earlier sustained on the basis of Munteanu's uncontroverted affidavit that he had no connection with Vinexport. Tr. Pro. 12/11/74, p. 10. Plaintiff was granted the opportunity to plead over for the purpose of alleging facts sufficient to warrant the exercise of so-called long arm jurisdiction under Rule 4(e), Fed. R. Civ. P., and Sections 16 and 17 of the Illinois Civil Practice Act, Ill. Rev. Stat., 1973, ch. 110, §§ 16, 17.

The sufficiency of the amended complaint is not before us, All that has been raised to date is subject matter and *in personam* jurisdiction. But because the jurisdictional reach of Section 17 of the Illinois Civil Practice Act is directed to "cause[s] of action" arising in material part out of the performance of certain enumerated types of conduct in Illinois, some appraisal of the contents of the amended complaint is required. However, the pleading requirements of Section 31 of the Illinois Civil Practice Act—that the pleader allege "substantial averments of fact necessary to state any cause of action either at law or in equity," Ill. Rev. Stat. 1973, ch. 110, § 31 —are not applicable here merely because Rule 4(e) embraces the methods and circumstances under which extraterritorial service of process may be effected in Illinois. A federal court must apply federal standards of pleading under Rule 8(a). Therefore, our inquiry here is not whether plaintiff has pleaded a cause of action which has arisen in part from conduct performed by the defendants in Illinois, but whether, under the

amended complaint, plaintiff would be permitted to "prove [a] set of facts in support of [its] claim which would entitle [it] to relief," (*Conley* v. *Gibson, supra,* at 45-46, 78 S. Ct. at 102) and whether that set of facts can be said to involve, in material part, the performance of acts by the defendants in Illinois.

Applying this standard to Count I of the amended complaint, under its fair intendments plaintiff would be permitted to prove that the manufacture, sale and export of wine in Romania is a state enterprise conducted exclusively through agencies of the State of Romania. In 1968 plaintiff was organized for the purpose of marketing Romanian wines in the United States. Sometime during the period 1968 through late 1972 plaintiff was appointed the exclusive agent for the importation and sale of Romanian wines in the United States by the defendant State of Romania, acting through various agents including Fructexport and Romagricola, which were the predecessors of defendant, Vinexport. Vinexport was organized by the State of Romania in November 1972 as a state owned enterprise for the purpose of exporting and selling Romanian wines to and in the United States.

During the period 1968-1972 plaintiff successfully promoted Romanian wines in the United States creating markets where none had theretofore existed. In 1972 it sold 3000 cases of wine, worth $22,000, in Chicago, Illinois and its environs. It incurred promotional and labeling expenses in the amount of $11,000 at defendants' request. Throughout this period it was promised by agents of the State of Romania that it would not be replaced as the exclusive agent for Romanian wines in the United States, that no other person would be permitted to import Romanian wine into the United States and that the parties would join their interests in a "mixed company . . . having as its purpose . . . a single legal entity which would engage exclusively in the sale of the wines and alcoholic beverages of Romania in the United States, and that plaintiff's

exclusive right in this respect [would] be vested . . . in the mixed company." Amended Complaint, ¶ 13.

In late 1972 or early 1973 defendant State of Romania, through its several defendant agents and contrary to plaintiff's exclusive distributorship, purportedly granted the exclusive right to sell all Romanian beverages in the United States to Beverage Importation Corporation of League City, Texas.

Plaintiff avers that the Romanian state's decision to terminate plaintiff as the exclusive agent for Romanian wines in the United States was the result of a conspiracy among defendants Bogdan, Lapadatu, Fodor and Munteanu, the object of which was to "eliminate" plaintiff and pursuant to which the conspirators "maliciously persuaded the appropriate authorities in Romania to grant the exclusive right [to sell] . . . to Beverage Importation Corporation. . . ." Amended Complaint, ¶ 22.

As for acts performed by the defendants in Illinois, plaintiff asserts in an uncontroverted affidavit by John R. Vintilla,[1] that in June 1971 defendant Bogdan organized and arranged a trade seminar in Chicago at which Bogdan was the principal speaker. At defendant's request, Vintilla attended and participated in the seminar as plaintiff's representative and plaintiff provided the wines that were served to the participants.

The Vintilla affidavit proceeds to state that in February 1972 defendant Lapadatu met with defendant Munteanu in Chicago and informed Munteanu of the recently established arrangements with Beverage Importation Corporation and that "plaintiff could no longer sell [Romanian] wines in Chicago and the midwest. . . ." Vintilla Affidavit, ¶ 13.

The merits of plaintiff's claim on the totality of the facts to be adduced are not before us. Thus, defendants' oblique asser-

1. Mr. Vintilla appears here as counsel for plaintiff. We infer from various papers on file that he is one of the principals in plaintiff. We remind him that he cannot persist in his role as counsel and testify to any controverted matters should the case be tried. American Bar Association's Code of Professional Responsibility, Disciplinary Rules 5-10(B), 5-102; Ethical Considerations 5-9, 5-10.

tion in their papers to an absence of consideration supporting plaintiff's alleged exclusive distributorship, defendants' assertion that the agreement is unenforceable in Illinois because plaintiff is not authorized to import or sell liquor in Illinois, and our own observation that portions of Count I sound in terms of an anticipated agency which never materialized, are not now germane. Those matters go to the merits of plaintiff's claim under Count I to which defendants have not yet responded because, as they assert, they cannot be compelled to.

Count II is much simpler and better pleaded. It alleges a contract under which defendant Vinexport agreed to deliver 900 cases of wine to plaintiff and 500 cases to plaintiff's customer, Arizona Distributing Company of Phoenix, Arizona. Presumably the deliveries were to be made to plaintiff either at its home office in Cleveland, Ohio or in Arizona, and the plaintiff's customer in Arizona. The count also alleges the expenditure of funds by plaintiff to promote the Arizona market. Plaintiff was damaged when Vinexport failed to perform.

Subject matter jurisdiction is no problem. The controversy is between a citizen of Ohio and a foreign state and agencies and citizens thereof and the amount in controversy exceeds $10,000 exclusive of interest and costs. 28 U. S. C. § 1332(a)(2).

Nor are the defendants, the Socialist Republic of Romania, and its several agents and agencies, immune from suit in a court of the United States. On the motion to quash the original service of process on Munteanu, as agent of Vinexport, we held in an unreported oral opinion that where a foreign sovereign engages in commercial as opposed to political or governmental activities, it is not immune from suit on its contracts. *Victory Transports Inc.* v. *Comisaria General, etc.*, 336 F. 2d 354 (2d Cir. 1964). *See Purdy Co.* v. *Argentina*, 333 F. 2d 95 (7th Cir. 1964); Annot., Foreign Sovereign-Immunity from Suit," 25 A. L. R. 3d 322 (1969). This jurisdictional holding in no

way, however, prejudges the question of the ultimate liability of Romania for the acts of Vinexport and its predecessors. It is based on the plaintiff's allegation that Vinexport and its predecessors are and were the alter ego of the State of Romania.

What is left then is the amenability of the defendants to suit in this district under the Illinois long arm statute.

As we have seen, Count I purports to allege, *inter alia*, that plaintiff was granted an exclusive distributorship of Romanian wines by defendants which embraced Chicago, a promotional meeting conducted in Chicago jointly by an agent of defendant Romania and plaintiff, substantial performance by plaintiff in Chicago in furtherance of the distributorship, the wrongful termination of the distributorship by the defendants and, alternatively, as the result of a conspiracy among certain defendants maliciously to deprive plaintiff of the distributorship, a meeting in Chicago between two of the defendants in furtherance of the conspiracy, and the exclusion of plaintiff from the Chicago market.

The Illinois long arm statute was intended to extend jurisdiction to the maximum reach permissible under due process of law. *Nelson* v. *Miller*, 11 Ill. 2d 378, 143 N. E. 2d 673 (1957). Due process of law, however, requires that a defendant have minimal contacts with the forum in which jurisdiction is asserted. *International Shoe Co.* v. *Washington*, 326 U. S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945). Section 17 of the Illinois Civil Practice Act as made applicable here by Rule 4(e), authorizes the exercise of jurisdiction over defendants in respect to claims arising out of the transaction of business or the commission of a tortious act in Illinois. A defendant is deemed to commit a tortious act in Illinois if his conduct, although performed out of state, causes injury here, provided he could have reasonably anticipated that his conduct could result in injury here. *Gray* v. *American Radiator Co.*, 22 Ill. 2d 432, 176 N. E. 2d 761 (1961).

We conclude that insofar as Count I is concerned, defendants have submitted to the jurisdiction of Illinois' courts and hence to this court by way of their transaction of business here and the commission or tortious acts here. *Fisons Limited* v. *United States*, 458 F. 2d 1241 (7th Cir. 1972), *cert. denied*, 405 U. S. 1041, 92 S. Ct. 1312, 31 L. Ed. 2d 581 (1972); *Consolidated Laboratories* v. *Shandon*, 384 F. 2d 797 (7th Cir. 1967); *Jack O'Donnell Chevrolet Inc.* v. *Shankles*, 276 F. Supp. 998 (N. D. Ill. 1967). Of course, the fact that plaintiff is not a resident of the forum state is immaterial. *Scoville Mfg. Co.* v. *Dateline Electric Co.*, 461 F. 2d 897, 900 (7th Cir. 1972).

The same is not true of Count II, however. There plaintiff alleges an individual transaction in respect to which there was no Illinois conduct or contact and none was anticipated. While it may be that the claim there asserted will be subsumed by the claim under Count I, it cannot stand alone. Section 17(3) of the Illinois Civil Practice Act which we must follow does not permit the joinder of a claim which is wanting in personal jurisdictional facts with one which is supported by those facts. Ill. Rev. Stat. 1973, ch. 110, § 17(3).

For the foregoing reasons the motion to quash service and dismiss is denied as to Count I and granted as to Count II of plaintiff's amended complaint; defendants are ordered to answer Count I within 20 days; Count II is dismissed. Cause set for report on status October 23, 1975 at 10:00 a.m.

APPENDIX B.

No. 75/10312

UNITED STATES OF AMERICA,
Department of State.

AND TO WHOM THESE PRESENTS SHALL COME, GREETING:

This to to certify that Mr. Hampton Davis, whose name is subscribed to the document hereunto annexed, was at the time of subscribing the same Assistant Chief of Protocol, Department of State, United States of America, and that full faith and credit are due to his acts as such.

In testimony whereof, I, Robert S. Ingersoll, Acting Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia, this first day of December, 1975.

/s/ ROBERT S. INGERSOLL,
Acting Secretary of State,

/s/ FRANCIS J. FILLIUS,
Authentification Office,
Department of State.

TO WHOM IT MAY CONCERN:

This is to certify that I, Hampton Davis, Assistant Chief of Protocol of the United States Department of State, am responsible for registering and maintaining the official records of diplomatic and consular officers and other employees of foreign governments in the United States and its territories.

The official records of the Department of State indicate that His Excellency Corneliu Bogdan is and has, since July 27, 1967, been the duly appointed Ambassador Extraordinary and Plenipotentiary of the Socialist Republic of Romania to the United States. In that capacity he enjoys full diplomatic immunity from judicial process under the provisions of Sections 252-254 of Title 22 of the United States Code.

/s/ HAMPTON DAVIS,
Hampton Davis,
Assistant Chief of Protocol.

Department of State,
Washington, December 1, 1975.

TO WHOM IT MAY CONCERN:

This is to certify that I, Hampton Davis, Assistant Chief of Protocol of the United States Department of State, am responsible for registering and maintaining the official records of diplomatic and consular officers and other employees of foreign governments in the United States and its territories.

The official records of the Department of State indicate that Mr. Napoleon Fodor has been duly notified to the Department of State since November 9, 1971, as an Economic Counselor to the Diplomatic Mission to the United States of America from the Socialist Republic of Romania; and is entitled to full diplo-

matic immunity under the provisions of Sections 252-254 of Title 22 of the United States Code.

/s/ HAMPTON DAVIS,
Hampton Davis,
Assistant Chief of Protocol.

Department of State,
Washington, December 1, 1975.

GROUP EXHIBIT B.

No. 75/10312-1

UNITED STATES OF AMERICA,
Department of State.

AND TO WHOM THESE PRESENTS SHALL COME, GREETING:

This is to certify that Mr. Hampton Davis, whose name is subscribed to the document hereunto annexed, was at the time of subscribing the same Assistant Chief of Protocol, Department of State, United States of America, and that full faith and credit are due to his acts as such.

In testimony whereof, I, Robert S. Ingersoll, Acting Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia, this first day of December, 1975.

/s/ ROBERT S. INGERSOLL,
Acting Secretary of State,

/s/ FRANCIS J. FILLIUS,
Authentication Officer, Department of State.

APPENDIX C.

Excerpts from Vienna Convention on Diplomatic Relations

ARTICLE 29

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

ARTICLE 30

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

2. His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability.

ARTICLE 31

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except in the case of:

(*a*) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission:

(*b*) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;

(*c*) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under sub-paragraphs (*a*), (*b*) and (*c*) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.